

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)

NUMBER 55-8642 (a18343))

MEMORANDUM DECISION

Change Application Number 55-8642 (a18343), in the names of Clark Moulton and Lake Creek Irrigation Company, was filed on September 12, 1994, to change the point of diversion, place of use, and nature of use of 9.0 acre-feet of water. Heretofore, the water has been diverted from Lake Creek and tributaries at the following points: (1) North 250 feet and West 1750 feet from the SE Corner of Section 2, T4S, R6E, SLB&M; (2) North 520 feet and West 1200 feet from the SE Corner of Section 5, T4S, R6E, SLB&M; (3) North 1167 feet and East 910 feet from the S $\frac{1}{4}$ Corner of Section 10, T4S, R6E, SLB&M; (4) North 1172 feet and East 179 feet from the SW Corner of Section 10, T4S, R6E, SLB&M; and (5) South 2842 feet and West 261 feet from the N $\frac{1}{4}$ Corner of Section 15, T4S, R6E, SLB&M. The water is rediverted at the following points: (1) North 520 feet and West 1200 feet from the SE Corner of Section 5, T4S, R6E, SLB&M; and (2) North 2463 feet and West 1508 feet from the S $\frac{1}{4}$ Corner of Section 10, T4S, R6E, SLB&M. The water is used for the irrigation of 3.00 acres in the S $\frac{1}{2}$ of Section 33; SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 34, T3S; S $\frac{1}{2}$ of Section 1; Section 2; Section 3; Section 4; SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5; SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9; N $\frac{1}{2}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10; N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 11; N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 12, T4S, R5E, SLB&M; NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6; N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T4S, R6E, SLB&M.

Hereafter, it is proposed to divert 9.0 acre-feet of water from a six inch diameter well, 100 feet to 500 feet deep, located North 940 feet and West 2335 feet from the E $\frac{1}{4}$ Corner of Section 36, T4S, R6E, SLB&M, to be used for the irrigation of 2.40 acres and the domestic purposes of four families in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T4S, R6E, SLB&M.

The application was advertised in The Wasatch Wave from October 12, 1994, to October 26, 1994. A late protest was received from the Provo River Water Users Association. A hearing was not held.

Upon review of the change application, it is noted that the applicants are proposing septic systems for the disposal of the inside culinary waste. There is sufficient water under this application for the proposed uses; however, should the sewage disposal system change, the State Engineer may require more water or less families to ensure that other rights are not impaired. From the information available to the State Engineer at this time, it appears that the change application can be approved, provided certain conditions are imposed.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Application Number 55-8642 (a18343) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The sewage system is a septic system on site and not part of the existing Heber Valley total containment system. Should this change, the State

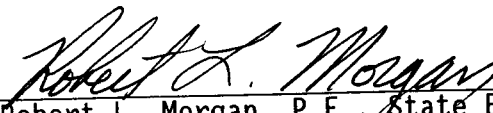
MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-8642 (a18343)
PAGE -2-

Engineer will have to reevaluate this change application.

2. The applicants shall keep valid and in good standing with the Lake Creek Irrigation Company the one share of stock for this change application.
3. The applicants shall take out of active irrigation under the historic place of use of the irrigation company a total of 3.0 acres of irrigated land.
4. The applicants shall install a permanent totalizing meter on the well and keep records of all water diverted from the well annually. The meter shall be made available to the State Engineer, or his representative, at all reasonable times in regulating this change application. The applicants shall deliver this information to the duly appointed river commissioner or the State Engineer annually for the amount of water diverted for the previous year by January 31 of each and every year.
5. Upon submittal of proof of change, the applicants shall provide evidence that Condition Numbers 1 through 4 have been met.
6. The applicants shall be responsible for any and all costs of a river commissioner for any additional labors incurred in regulating this change application.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 27th day of April, 1995.


Robert L. Morgan, P.E., State Engineer

RLM:JER:mw

Mailed a copy of the foregoing Memorandum Decision this 27th day of April, 1995,
to:

Clark Moulton
509 East 2100 North
Provo, UT 84032

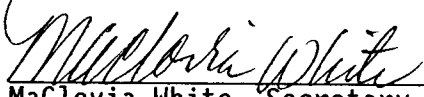
Lake Creek Irrigation Co.
Attn: Claudia Bradshaw
190 North Main
Heber City UT 84032

MEMORANDUM DECISION
CHANGE APPLICATION NUMBER
55-8642 (a18343)
PAGE -3-

Provo River Water Users Association (late protest)
1875 South State, #1100
Orem, UT 84058

Snow Christensen and Martineau (late protest)
P. O. Box 45000
Salt Lake City, UT 84145-5000

Stanley H. Roberts, Jr.
1675 South 350 East
Orem, UT 84058

BY: 
Maclovio White, Secretary